



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: pending Patent Application : Docket # MPD316
of: :
John Hawkins : Group Art Unit: 1712
Serial No. 10/018,557 :
Filing Date 04/11/02 : Examiner: Metzmaier; Daniel S.
For: "SURFACTANT EMULSIONS AND :
STRUCTURED SURFACTANT :
SYSTEMS" :

4/26/04

Commissioner for Patents
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Signature Martha Victory

REQUEST FOR RECONSIDERATION UNDER 37 C.F.R. 1.111

Reconsideration of the above-identified Application for patent in light of the claim amendments and remarks herein presented is hereby requested. Enclosed herewith this response to the first Office Action in this matter by Applicant are amendments to the claims and arguments pertaining to why Applicant believes the instant invention as now claimed to be patentable in view of the prior art and applicable law.

Applicant's Statements

The 01/07/04 Office Action has indicated that claims 1-8 are rejected under 35 USC 103(a) being obvious in view of the disclosures contained in the references: EP 0 623 670 A2, in view of US 4,530,780, and the Derwent Abstract, AN 1983-52014k. The following description is presented to illustrate why the present invention is not obvious in view of the prior art.

EP 0 623 670 A2 is directed to a surfactant composition containing a high level of surfactant and/or electrolyte (pp2, lines 2-3). According to EP 0 623 670 A2, to prevent flocculation a stabilizer (also referred to as a deflocculant) is added to the composition. The stabilizer is a surfactant that forms micelles and which is soluble in aqueous electrolyte. Such surfactants are described, for example, on page 6 line 46 to page 7 line 12, and page 7 lines 26048. Such compositions provide stability – this stability is in terms of the formulation, (EP 0 623 670 A2 at page 6, line 49) – and not flocculence.

EP 0 623 670 A2 suffers from the technical problem that the concentration of deflocculant required to deflocculate to optimum viscosity is critical within narrow limits and varies with temperature. Either too little or too much deflocculant causes instability and/or excessive viscosity. As a result the deflocculated systems tend to separate if the temperature varies significantly. This problem is set out in applicant's instant specification in the paragraph spanning pages 4 and 5.

Applicant's currently-claimed invention solves the technical problem present in EP 0 623 670 A2 by providing a surfactant composition containing water-soluble thiocyanate. The use of thiocyanate is not common in the field of the present invention, as immediately recognized by

one of ordinary skill in this art. Therefore, it is no surprise that the prior art is wholly devoid of any teaching for one of ordinary skill in the art to use thiocyanate to solve the technical problem with EP 0 623 670 A2. In the current application it is clearly set out that there is a problem with flocculation when compositions having high surfactant and/or high electrolyte concentrations are used (page 4 second paragraph and page 6 second paragraph). This problem is the basis of EP 0 623 670 A2 as clearly set out in the first paragraph of that application (see also page 5, lines 19-20 of EP 0 623 670 A2). EP 0 623 670 A2 solves this problem by recognizing that certain surfactants, as defined in claim 1 of EP 0 623 670 A2, act as deflocculants (stabilizers).

Page 11 lines 38-49 of EP 0 623 670 A2 states that the proportion of electrolyte is determined as a proportion to the amount of surfactant. However, the same passage states that the required proportion of the electrolyte is used to provide adequate performance, e.g., in terms of washing performance – there is no reference whatsoever to the use of electrolytes for providing temperature stability.

The present invention provides temperature stability to surfactant compositions – especially deflocculated structured surfactants (present specification page 5 penultimate paragraph). It does this by the presence of thiocyanate in the surfactant composition. If one of ordinary skill in the art were to consider the role of thiocyanate to be that of a standard electrolyte, he would then consider it to be contrary to the teachings of the prior art to add thiocyanate to provide a stable deflocculated composition since adding more electrolyte would be thought to decrease the stability of the composition. In reality the role of thiocyanate as an electrolyte is irrelevant. In the example on page 12 of the instant specification, the composition

is seen to contain 19% sodium tripolyphosphate, which is a strong electrolyte and therefore acts as an electrolyte/builder. In this example, the presence of only 0.5 % potassium thiocyanate would not be expected to have much effect on the total electrolyte concentration of the composition. Thus, it is the presence of thiocyanate itself, not the presence of additional electrolyte, that provides the desired temperature stability. Nothing in any of the prior art of record teaches or even remotely suggests the use of thiocyanate in this regard. Therefore, in view of the foregoing, the prior art actually teaches away from the present invention, and the novel discovery of the new use of thiocyanate in the regard disclosed by applicant would not be obvious to one of ordinary skill in the art. In view of this, we believe the currently-claimed invention to be unobvious, and respectfully request the claim rejections under 35 USC § 103 be reconsidered and withdrawn.

The 01/07/04 Office Action states in the first line at the top of page 4 that: "The references are combinable because van de Pas et al is cited as prior art structured surfactant compositions in the Albright & Wilson reference. Applicant respectfully submits that the mere recitation of a document as being prior art in a patent application is not a bona fide grounds for combining two references to meet a claim in a pending application for purposes of 35 USC § 103. This is clear from MPEP section 706.02(j) sets forth the three basic criteria which must be met for establishing a prima facie case of obviousness:

- "1) There must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings;
- 2) there must be reasonable expectation of success; and
- 3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based upon applicant's disclosure."

Thus, there must be some suggestion or motivation, not merely the presence of a reference. In the present case, there is no teaching, suggestion, or motivation for combining the references to meet applicant's instantly-pending claims.

Further, the 01/07/04 Office Action incorrectly states on page 4, line5 that: "alkali metal rhodamides are synonymous with alkali metal isocyanates. One of ordinary skill in the art immediately recognizes rhodamides as being isothiocyantes of conjugated organic molecules (fluorescenes). These materials have a very high molecular weight with respect to the thiocyanates of the present invention. Additionally, they are isothiocyantes, and are fundamentally different on a chemical structural level in comparison to thiocyanates. Isothiocyantes are very different from thiocyanates in their chemical properties. Therefore, the combination suggested by the Office Action does not meet Applicant's' instant claims.

For these several reasons, Applicant respectfully submits that a prima facie case of obviousness is not present in the instant case with regard to any pending claim, and respectfully requests that a Notice of Allowance be issued as soon as is reasonably practicable in connection herewith.

Thank you for your consideration.

Respectfully Submitted,



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